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No. 562

In the Supreme Court of the United States

OCTOBER TERM, 1936

UNITED STATES OF AMERICA, PETITIONER

v.

HARRY J. MADIGAN

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The District Court for the Southern District of California rendered no opinion. The opinion of the Circuit Court of Appeals (R. 18–21) is reported in 85 F. (2d) 609.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered September 8, 1936. (R. 21.) The petition for a writ of certiorari was filed December 8, 1936, and granted January 11, 1937. (R. 22.) The jurisdiction of this Court is conferred by

Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether an insured who converted his insurance from a yearly renewable (war risk) term contract to a United States Government life insurance policy, and later suffered a total permanent disability, is entitled under Sections 305 and 307 of the World War Veterans' Act, 1924, as amended, to recover disability benefits under the yearly renewable term contract, together with all premiums paid under the converted contract.

STATUTES INVOLVED

The statutes involved are printed in the Appendix, *infra*, p. 22 et seq.

STATEMENT

The respondent, Harry J. Madigan, hereinafter called the plaintiff, brought this suit in the District Court of the United States for the Southern District of California to recover total permanent disability benefits under a contract of war risk term insurance.

The case was tried before the court, without a jury, upon an agreed statement of facts stipulating, in substance, that the plaintiff, while in the military service of the United States between July 15, 1917, and July 25, 1919, applied for and was granted war risk term insurance in the sum of

$10,000; that on November 1, 1919, he converted the full amount of such insurance into a twenty-payment life policy of United States Government insurance, and paid all premiums due on the latter policy until January 31, 1920, when it was allowed to lapse for nonpayment of further premiums; that he was suffering from a "compensable disability" on the date of the conversion (November 1, 1919) and also at the time when the twenty-payment life policy lapsed (January 31, 1920); that on June 6, 1925, the United States Veterans' Bureau rated the plaintiff as totally and permanently disabled, and at that time he was entitled to disability compensation from the Government in the sum of $312.25, no part of which had then been paid to him. (R. 5.)

The plaintiff sought to recover total permanent disability benefits under the original war risk term contract in preference to the twenty-payment life policy, apparently on the theory that under Section 305 of the World War Veterans' Act, 1924, as amended July 2, 1926, *infra*, pp. 29–30, and Section 307 of that Act, as amended July 3, 1930, *infra*, p. 36, the insurance was subject to revival and maturity under either policy, and that he was entitled to elect the one under which he should be paid. (R. 11, 19.) He elected to claim under the original term contract, presumably because of its lower rate of premium which would enable a

greater amount of insurance to be revived under it than under the twenty-payment life policy. (R. 20.)[1]

The United States, while conceding that the conditions existed for revival and maturity of the insurance under the twenty-payment life policy, requested the court to rule that the insurance was not subject to revival under the original term contract since conversion did not constitute a lapse, cancellation or reduction of insurance within the meaning of Section 305 of the World War Veterans' Act, as amended, and thus that there was absent an essential condition precedent to such revival; and that Section 307, as amended, had no application. (R. 10, 19, 20.)

The trial court, upon the basis of the agreed statement of facts (R. 5), made findings (R. 6) and entered conclusions of law (R. 7) and judgment for the plaintiff (R. 7–8), awarding him total permanent disability benefits based upon the theory that there had been a revival of so much of the insurance under the original contract as the amount of compensation ($312.25) remaining uncollected on the date of total permanent disability would have purchased if it had been applied to the payment of all premiums which would have been due

[1] Under the twenty-payment life policy, the net commuted value of insurance subject to revival has been computed as $2,170.92. (R. 10.) The $312.25 of uncollected compensation would purchase insurance in the net commuted value of $6,469.73 under the term contract, if plaintiff's theory were sound.

under the original contract between the date of conversion and the date of total permanent disability. Plaintiff was also allowed to recover all premiums which he had paid on the twenty-payment life insurance policy.[2]

The Government appealed from this judgment to the Circuit Court of Appeals for the Ninth Circuit (R. 13–15), assigning error *inter alia* to the trial court's denial of its request for a ruling that there had been no lapse, cancellation or reduction of the war risk term insurance within the meaning of Section 305, *infra*, pp. 29–30 (R. 14), and also to the trial court's ruling that the plaintiff had the right to elect to recover insurance benefits under his original policy by virtue of Section 307, *infra*, p. 36, together with the premiums paid on the second policy (R. 15).

The Circuit Court of Appeals affirmed the judgment of the District Court (R. 21), but the grounds upon which it based its decision appear uncertain.

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[2] The Government requested findings of fact and conclusions of law, moved for judgment in its favor, and excepted to the overruling of its motion and to the conclusions of law entered by the trial court. (R. 9–10, 11.) All of these proceedings were incorporated in a bill of exceptions, which was signed by the trial court within the term, as duly extended by successive orders (R. 11–13), although the questions involved are presented by the record proper, and subject to review without bill of exceptions. *Supervisors* v. *Kennicott*, 103 U. S. 554, 556; *United States* v. *La Franca*, 282 U. S. 568, 570; *United States* v. *Huie*, 73 F. (2d) 305 (C. C. A. 5th).

As we read the opinion (R. 18–21), two possible constructions thereof are presented: (a) that Section 305 provides for the revival and payment of yearly renewable term insurance where total permanent disability occurs after conversion of such insurance into a United States Government life insurance policy; or (b) that if Section 305, standing alone, may not be so construed, it was in some way amended by Section 307 to provide for such an interpretation.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding (a) that, under Section 305 of the World War Veterans' Act, 1924, as amended by the Act of July 2, 1926, yearly renewable term insurance may be matured by total permanent disability occurring after its conversion to a policy of United States Government life insurance, or (b) that Section 307 of the World War Veterans' Act, as amended by the Act of July 3, 1930, amended Section 305 of the Act to provide for the maturity of yearly renewable term insurance by total permanent disability occurring after its conversion to a policy of United States Government life insurance.

2. In affirming the judgment of the District Court.

SUMMARY OF ARGUMENT

1. Section 305 of the World War Veterans' Act, 1924, as amended, provides for revival and maturity of lapsed, canceled or reduced insurance.

This section has no application to yearly renewable term insurance after its *conversion* into United States Government life insurance. Conversion is not mentioned. The purpose of Congress is plainly limited to the restoration of insurance protection to those who had lost it as a result presumably of nonpayment by the Government of disability compensation. Conversion involves continuance, not loss, of insurance protection, requires the payment of a higher rate of premium, and thus could not be attributable to nonpayment of compensation. Nor could any loss of protection under the term contract, which may have been due to the insured's not having reinstated it after conversion, be attributable to nonpayment of compensation, for such reinstatements were prevented by administrative regulations in any event. Moreover, Congress clearly did not intend to award an insured benefits which he failed to secure merely because of an unfortunate determination as to the type of insurance which he selected.

Furthermore, the practice of Government officials charged with the enforcement of the statutory provisions for revival of insurance has for many years been consistently in accord with the interpretation urged here. Several reenactments of those provisions, without any change indicative of a disapproval of such interpretation, indicate legislative approval amounting to a reenactment of the provisions as so interpreted.

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2. Section 307 of the World War Veterans' Act, as amended by the Act of July 3, 1930, contains no express provision for revival of insurance, and no intent to make such provision may be implied from its language. That section was designed merely to remove the defense of estoppel or novation, which had been held by several courts to bar claims for permanent and total disability benefits accrued under a prior contract of insurance but presented after reinstatement or conversion. *Cf. United States* v. *Arzner,* 287 U. S. 470. It was not intended to confer upon an insured basic rights under the prior contract which he did not otherwise possess. In the instant case there is no claim for benefits accruing prior to conversion, and Section 307 is therefore of no relevance. The language of the Act is free from doubt, and resort may not be had to Section 305, a prior enactment, in order to create an ambiguity. Such rights, moreover, could arise with respect to revival of insurance only upon the theory of an implied amendment of the provisions of Section 305. But this would be opposed to the well settled rule that amendments by implication are not favored, and are not to be declared unless no other construction is reasonable. In the instant case no repugnancy whatever exists between the provisions of the respective statutes in the absence of an interpretation wholly inconsistent with the evident purpose of each.

ARGUMENT

I

THE PROVISIONS FOR REVIVAL AND MATURITY OF LAPSED, CANCELED OR REDUCED INSURANCE CONTAINED IN SECTION 305 OF THE WORLD WAR VETERANS' ACT, AS AMENDED, ARE NOT APPLICABLE TO YEARLY RENEWABLE TERM INSURANCE AFTER ITS CONVERSION INTO UNITED STATES GOVERNMENT LIFE INSURANCE

Section 305 of the World War Veterans' Act, as amended, *infra*, pp. 29–30, provides, in effect, that if any person who was insured under that Act, or its predecessor, the War Risk Insurance Act, *infra*, pp. 22–23, allowed his insurance to lapse, or canceled or reduced it while suffering from a disability for which compensation was due under other provisions of those Acts, but had not been paid to him, and if he later died or became permanently and totally disabled at a time when compensation remained due and unpaid, then so much of his insurance as the compensation due at the time of his death or permanent and total disability would have kept in force from the date of the lapse, cancellation or reduction, if applied to the payment of premiums, shall not be considered as lapsed, canceled or reduced, and shall be paid after deducting the unpaid premiums and interest thereon.

This section contains no provision, in the event of conversion of the insurance from one form of contract to another, for revival under the former contract, and it is submitted that no such provision may be found by implication. The sole purpose

of Congress, as disclosed on the face of the section, was to prevent loss of insurance protection which was presumed to have resulted from nonpayment by the Government of disability compensation due the insured under other statutory provisions.

The section provides specifically, as a condition precedent to the revival, that the insured "allowed his insurance to lapse, or has canceled or reduced" it. The words "lapse" and "canceled or reduced" import a loss of the insurance in whole or in part. Conversion implies the precise contrary—a continuance of the insurance in another form.

Furthermore, this section is expressly applicable only to cases where lapse, cancellation or reduction occurred while the insured was "suffering from a compensable disability for which compensation was not collected", and where he became permanently and totally disabled, or died, while some or all of the compensation due him remained unpaid. These provisions were manifestly based on the theory that if payment of the compensation had been begun by the Government prior to lapse, cancellation or reduction of the insurance and had been continued, the insured would have received funds sufficient to maintain his insurance in force continuously, in whole or in part, until maturity by permanent total disability or death, and would have applied them to that purpose, or if payment had been made subsequent to lapse, cancellation or reduction, that he would have used the money to

reinstate his insurance under Section 408, War Risk Insurance Act, *infra,* pp. 23–26, or Section 304, World War Veterans' Act, 1924, as amended, *infra,* pp. 28–29. In other words, his failure to maintain or reinstate his insurance was presumed to have been due to lack of funds which the Government had failed in its duty of providing. Congress, therefore, proposed to restore the insurance protection thus lost or, in other words, to do for the insured what he could, and presumably would, have done for himself if he had received his compensation. However, there was no intent to revive the insurance if the original loss, by lapse, cancellation or reduction had occurred at a time when the Government was not in default in the payment of compensation due the insured. Where the insured had originally abandoned his insurance for reasons other than nonpayment of compensation, Congress was evidently unwilling to presume that a subsequent default in payment of compensation would be responsible for his failure to reinstate the insurance.

It is submitted that revival of yearly renewable term insurance after conversion to United States Government life insurance, sought by the plaintiff here, is outside the purpose of Section 305. In the first place, conversion does not in itself involve loss of insurance protection (as previously stated) and is not attributable to nonpayment of compensation since it involves the payment of a higher

premium. Furthermore, the reinstatement of term insurance after its conversion was prohibited by regulation (see letter of the Administrator of Veterans' Affairs, dated February 11, 1937, *infra*, pp. 40–42) and, therefore, any loss of insurance which may have been due to his not having reinstated his term contract after the lapse of the converted contract could not have been due to the nonpayment of his compensation. In other words, the plaintiff is seeking through Section 305 a benefit which he could not have obtained for himself if all compensation due him had been timely paid.

It is true that under the construction urged by the Government the plaintiff is granted less than he would have received if he had allowed his insurance to lapse on November 1, 1919, instead of converting it. This is true because the amount of insurance revived by any given sum of uncollected compensation varies with the premium rate of the insurance revived, for the statute specifically protects against lapse only "so much of *his* [the veteran's] insurance as said uncollected compensation * * * would purchase if *applied as premiums when due.*" Of course the premium rate varies with the form of insurance and particularly in the case of yearly renewable term insurance, with the age of the insured.

Subsequent events have proved unfortunate the election made by the plaintiff as to the form in which to continue his insurance after November

1, 1919. But the form of insurance was optional, the choice dependent upon individual requirements and inclinations, and the advantages or disadvantages of any particular form largely dependent upon subsequent events. Any insured who selects a policy of high premium rate may be said to make an unfortunate choice as to the form of insurance if such policy matures by disability or death within a few years, since the benefit does not exceed that which may be purchased by a lesser premium. But exactly the opposite is true if the maturity of the policy is long deferred.

We submit that it is quite clear that in the enactment of Section 305, Congress intended to protect an insured only against the loss of insurance resulting from the nonpayment of compensation and that it did not intend to award additional benefits which a more fortunate selection of insurance of a lower premium rate would have made available.

Moreover, there is no more reason why he should be granted the benefits which he would have received if he had elected to lapse his term insurance on November 1, 1919, than for granting him the greater or lesser benefits to which he would have been entitled had he elected to follow some other course.[3]

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[3]As one of many possible examples, if instead of converting to a twenty-payment life policy (as he did) he had applied the funds represented by the premiums which he paid, to a continuance of yearly renewable term insurance, the amount of such insurance subject to revival would have been even larger than the sum which he now seeks.

The Government's contention as to the limited purpose of Section 305 is supported both by opinions of Circuit Courts of Appeals and by the legislative history and long continued administrative interpretation of the statutory provisions for revival and maturity of insurance from the time they were originally enacted.

In *United States* v. *Hendrickson*, 53 F. (2d) 797, 799 (C. C. A. 10th), it is said of that section:

> This language is clear, * * *. A war risk insurance policy does not lapse for nonpayment of premiums, as long as the government fails to pay the soldier installments of compensation to which he is entitled under the ratings of the bureau. Nor is the purpose of the statute obscure; if the government had paid the compensation as and when due, the soldier would have been able to have paid his premiums.

A substantially similar statement appears in *United States* v. *Sellers*, 75 F. (2d) 623, 625 (C. C. A. 5th), certiorari denied, 295 U. S. 763.[4]

The first provisions for revival and maturity of insurance were contained in Section 408 of the War Risk Insurance Act, as enacted by the Act of August 9, 1921, *infra*, pp. 23–26, which provided for

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[4] The court below cited these cases and *Berntsen* v. *United States*, 41 F. (2d) 663 (C. C. A. 9th) in support of its decision. (R. 19–20.) None of these cases presented the same question for decision as that involved herein, as none of them concerned converted insurance at all, and insofar as the opinions have application we submit that they support the Government's interpretation of Section 305.

the revival and maturity of lapsed insurance in the event of death, and also for reinstatement of lapsed insurance. In the House Committee Report, *infra*, pp. 26–27, it was said of this enactment:

> It would appear to be equitable and fair when it is remembered that as a matter of fact in most of the instances the reason the disabled soldier failed to keep up his insurance was that he was short of funds and it took the Government some time to investigate and grant his compensation, and that because of this financial stringency he allowed his insurance to lapse.[5]

The first amendment of this section by the Act of March 4, 1923, *infra*, pp. 23–26, provided for revival and maturity in the event of total permanent disability, as well as death, and made other changes. Provisions for revival and maturity were enacted in amended form in Section 305 of the World War Veterans' Act, 1924, *infra*, pp. 29–30.[6] No change in the original purpose is indicated in any of these amendments.

The Act of July 2, 1926, *infra*, pp. 29–30, amended Section 305 by providing for revival and maturity not only of insurance which had been allowed to

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[5] This report was made prior to the insertion of the provisions for revival by amendment from the floor of the House, *infra*, p. 27. But it is manifest that the language quoted above is as applicable to such provisions as to those for reinstatement.

[6] Provisions for reinstatement previously contained in Section 408 of the War Risk Insurance Act were placed in Section 304 of the World War Veterans' Act, *infra*, pp. 28–29.

lapse, but also that which had been canceled or reduced. It appears by the Committee Reports, *infra*, pp. 30-31, 32, and Hearings, *infra*, pp. 31-32, which preceded the enactment of this amendment, that its purpose was to overcome a ruling of the Comptroller General, *infra*, pp. 32-36 to the effect that so much of a veteran's insurance as had been canceled or reduced was not subject to revival under Section 305, as originally enacted, because cancellation or reduction, which necessarily involved affirmative action on the part of the insured, did not come within the meaning of the word "lapse", which involved only inaction. The Director of the Veterans' Bureau made a statement before the Senate Finance Committee, *infra*, pp. 31-32, in which he expressed approval of the amendment as embodying that purpose. No other purpose was discussed or suggested. Clearly, there was no intention here to extend the scope of the provisions in question beyond their original purpose of merely restoring insurance protection which may have been lost due to nonpayment of compensation. Moreover, the latest amendment of this section by the Act of 1928, *infra*, p. 30, is equally devoid of any suggestion of change in that respect.

Furthermore, the practice of the Government officials charged with the enforcement of the provisions in question has, from the beginning and in reference to numerous cases, been consistently in accord with the construction urged by the Government here. (See letter of Administrator of Vet-

erans' Affairs, dated December 5, 1936, *infra*, pp. 38–40.) This fact alone is sufficient to entitle that construction to the highest respect if it were otherwise doubtful (*Norwegian Nitrogen Products Co. v. United States*, 288 U. S. 294, 315; *United States v. Jackson*, 280 U. S. 183, 193; *Logan v. Davis*, 233 U. S. 613, 627; *Hastings etc. Railroad Co. v. Whitney*, 132 U. S. 357, 366; *Brown v. United States*, 113 U. S. 568, 571; *United States v. Moore*, 95 U. S. 760, 763), and it is further submitted that the four reenactments of those provisions without any change indicative of a disapproval of that construction, constitute a legislative adoption of it. *United States v. G. Falk & Brother*, 204 U. S. 143, 152; *United States v. Hermanos y Compania*, 209 U. S. 337, 339; *Johnson v. Manhattan Ry Co.*, 289 U. S. 479, 500; *New Haven R. R. v. Interstate Com. Com.*, 200 U. S. 361, 401–402; *Komada v. United States*, 215 U. S. 392, 396; *National Lead Co. v. United States*, 252 U. S. 140, 145–147.

II

SECTION 307 OF THE WORLD WAR VETERANS' ACT, AS AMENDED BY THE ACT OF JULY 3, 1930, DOES NOT EXTEND THE SCOPE OF THE PROVISIONS IN SECTION 305 FOR REVIVAL OF LAPSED, CANCELED, OR REDUCED INSURANCE TO PERMIT AN INSURED TO ELECT REVIVAL OF INSURANCE UNDER THE ORIGINAL CONTRACT AFTER ITS CONVERSION

Section 307 of the World War Veterans' Act was amended by the Act of July 3, 1930, *infra*, p. 36,

by adding a provision permitting an insured who had reinstated or converted his insurance to claim or bring suit on the prior contract, and *"if found entitled thereto"* to recover benefits under such contract upon the surrender of the subsequent contract or policy.

It is submitted that this Act was directed solely to permitting recovery of disability benefits under the prior contract where the claim is based upon the existence of total permanent disability while that contract was in force, and not where such disability did not occur until after it had terminated by lapse due to nonpayment of premiums or, as in the instant case, by conversion into another form of insurance. This is made clear by the background of the 1930 Act.

There had been several decisions in suits to recover total permanent disability benefits under contracts of insurance after the insurance had been converted into another form of contract or been allowed to lapse and had been reinstated, in each of which the plaintiff had based his claim upon total permanent disability alleged to have existed prior to the lapse or conversion. Since either the reinstatement or conversion was necessarily effected upon the mutual understanding of the Government and the insured that the latter was not totally permanently disabled at the time of such reinstatement or conversion, it was held that he was barred from recovery upon the ground of es-

toppel by contract or novation. (*United States* v. *Buzard*, 33 F. (2d) 883 (C. C. A. 9th); *Stevens* v. *United States*, 29 F. (2d) 904 (C. C. A. 8th); *United States* v. *Kusnierz*, 33 F. (2d) 887 (C. C. A. 9th).)

It was for the purpose of overcoming those decisions that the amendment of Section 307 was enacted. That purpose is expressly declared in the Senate Committee Report which accompanied the Act (*infra*, pp. 36–37), and is recognized in the opinion of this Court in *United States* v. *Arzner*, 287 U. S. 470.[7] Since each of the above decisions related to a claim of total permanent disability during the life of the prior contract and prior to reinstatement or conversion, it is not readily apparent upon what ground it could be urged that legislation designed to overcome them would be applicable to a case like the one at bar where the total permanent disability did not occur until several years after the prior policy had terminated by conversion and where, therefore, no question of estoppel is involved.

The Act in question was manifestly intended only to permit a claim or suit by an insured to enforce rights under the prior contract the asser-

[7] The court below relied upon its own decision in the *Arzner* case, which was affirmed by this Court, but there the total and permanent disability occurred prior to conversion at a time when the term insurance contract was in force, and the only question presented was whether the surrender of the converted policy for cash constituted a bar to the recovery of disability benefits under the earlier term contract.

tion of which might otherwise have been barred by estoppel or novation. It was not intended otherwise to confer upon the insured rights under the former contract which he did not already possess or to alter the terms of that contract in any respect. Indeed the words "if found entitled thereto" clearly disclose the intention of Congress in this respect.

If the plaintiff in the instant case had claimed that his total permanent disability existed during the life of the original term insurance contract, that is, prior to conversion, he could have claimed disability benefits under that contract by virtue of this Act. The fact that he had subsequently entered into a new contract would have constituted no bar to his suit. But where, as here, his claim is based upon total permanent disability occurring after his original contract had terminated by conversion, and when, as previously stated, the converted contract alone was in force under Section 305, it is submitted that Section 307, as amended, has no application for any purpose. The language of the Act itself is free from doubt on this point, and resort may not be had to prior enactments of Section 305 in order to create an ambiguity. *Hamilton* v. *Rathbone*, 175 U. S. 414, 421.

Even if the meaning of the Act were doubtful, a construction in favor of a right to revive the prior contract could only be based upon the theory that the Act of 1930 amended Section 305 by implication. But that would be opposed to the well

settled rule of statutory construction that amendments by implication are not favored, and an intention to amend will not be imputed to Congress unless the statutes involved admit of no other construction. *Rosencrans* v. *United States,* 165 U. S. 257, 262; *Frost* v. *Wenie,* 157 U. S. 46, 58; *Washington* v. *Miller,* 235 U. S. 422, 428; *United States* v. *Healey,* 160 U. S. 136, 147; *United States* v. *Burroughs,* 289 U. S. 159, 164. That rule is, moreover, especially applicable where, as here, the amendment would involve a distinct departure from a long established policy. *United States* v. *Munday,* 222 U. S. 175, 182; *Ibanez* v. *Hongkong Banking Corp.,* 246 U. S. 621, 626.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the Circuit Court of Appeals should be reversed.

STANLEY REED,
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FEBRUARY 1937.

APPENDIX

The first authority to grant war risk insurance is contained in the Act of October 6, 1917, Sec. 2 (c. 105, 40 Stat. 398, 409, 410), amending the War Risk Insurance Act by adding five new sections, providing, in part:

> SEC. 400. That in order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and of the Navy Nurse Corps (female) when employed in active service under the War Department or Navy Department greater protection for themselves and their dependents than is provided in Article III, the United States, upon application to the bureau and without medical examination, shall grant insurance against the death or total permanent disability of any such person in any multiple of $500, and not less than $1,000 or more than $10,000, upon the payment of the premiums as hereinafter provided.
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> * * * * *
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> SEC. 402. That the director, subject to the general direction of the Secretary of the Treasury, shall promptly determine upon and publish the full and exact terms and conditions of such contract of insurance. * * * Provisions for maturity at certain ages, for continuous installments during the life of the insured or beneficiaries, or both, for cash, loan, paid-up and extended values, dividends from gains and savings,

and such other provisions for the protection and advantage of and for alternative benefits to the insured and the beneficiaries as may be found to be reasonable and practicable, may be provided for in the contract of insurance, or from time to time by regulations. * * *

SEC. 403. * * * The premium rates shall be the net rates based upon the American Experience Table of Mortality and interest at three and one-half per centum per annum.

SEC. 404. That during the period of war and thereafter until converted the insurance shall be term insurance for successive terms of one year each. Not later than five years after the date of the termination of the war as declared by proclamation of the President of the United States, the term insurance shall be converted, without medical examination, into such form or forms of insurance as may be prescribed by regulations and as the insured may request. Regulations shall provide for the right to convert into ordinary life, twenty payment life, endowment maturing at age sixty-two and into other usual forms of insurance and shall prescribe the time and method of payment of the premiums thereon, * * *.[1]

Section 408 was added to the War Risk Insurance Act by the Act of August 9, 1921, Sec. 27 (c. 57, 42 Stat. 147, 156–157), and was amended by

[1] The time limit for conversion provided in Section 404 was extended by successive enactments to July 2, 1927. World War Veterans' Act, June 7, 1924, Sec. 301 (c. 320, 43 Stat. 607, 624): Act of June 2, 1926 (c. 449, 44 Stat. 686–687), amending Section 301 of the World War Veterans' Act 1924.

the Act of March 4, 1923, Sec. 7 (c. 291, 42 Stat. 1521, 1525-1526) to provide:

> SEC. 408. In the event that all provisions of the rules and regulations other than the requirements as to the physical condition of the applicant for insurance have been complied with, an application for reinstatement of lapsed or canceled yearly renewable term insurance or application for United States Government life insurance (converted insurance) hereafter made may be approved: *Provided*, That the applicant's disability is the result of an injury or disease, or of an aggravation thereof, suffered or contracted in the active military or naval service during the World War: *Provided further*, That the applicant during his lifetime submits proof satisfactory to the director showing the service origin of the disability or aggravation thereof and that the applicant is not totally and permanently disabled. As a condition, however, to the acceptance of an application for the reinstatement of lapsed or canceled yearly renewable term insurance or United States Government life insurance (converted insurance) the applicant shall be required to pay all the back monthly premiums which would have become payable if such insurance had not lapsed, together with interest at the rate of 5 per centum per annum compounded annually on each premium from the date said premium is due by the terms of the policy: *Provided further*, That where any soldier has heretofore allowed his insurance to lapse, while suffering from wounds or disease suffered or contracted in line of service, and was at the time he allowed his [said policy] *insurance* to lapse entitled to compensation on account thereof in a sum equal to or in excess of the

amount due from him in premiums on his said insurance, and [has since died] *dies or has died* from said wounds or disease, *or becomes or has become permanently and totally disabled by reason thereof,* without collecting [or making claim for] said compensation, [or being allowed to reinstate his said policy on account of his physical condition] *and at the time of such death or permanent total disability had or has sufficient uncollected compensation to pay all unpaid premiums,* then and in that event said policy shall not be considered as lapsed, and the *United States* Veterans' Bureau is hereby authorized and directed to pay to the *said soldier or his* beneficiaries [of said soldier] under said policy the amount of said insurance less the premiums and interest thereon at 5 per centum per annum compounded annually in installments as provided by law: *Provided further, That where any soldier has heretofore allowed his insurance to lapse, while suffering from wounds or disease contracted in line of service, and has applied for reinstatement thereof in whole or in part, and where at the time of such application he was not totally and permanently disabled, and where he was not allowed to reinstate because of health condition other than total permanent disability, and where said soldier has since died from said wounds or disease or has become permanently and totally disabled by reason thereof, then and in that event the United States Veterans' Bureau is hereby authorized and directed to pay to said soldier or his beneficiaries the amount of insurance attempted to be reinstated less the premiums and interest thereon at 5 per centum per annum compounded annually in installments*

as provided by law: Provided further, That the Comptroller General of the United States is hereby authorized and directed to allow credit in the accounts of the disbursing clerk of the United States Veterans' Bureau for all payments of insurance installments hereafter made, without verification of the deduction on the pay rolls, of such premiums as may have accrued prior to January 1, 1921, while the insured was in service. [Italics represent words added by the amendatory Act. Words in the prior Act, omitted by amendment, are enclosed in brackets.]

In the House Committee Report made in connection with the Act of August 9, 1921 (H. Rep. No. 104, 67th Cong., 1st Sess., p. 10) it is said:

> Section 26 for the first time makes provision for the reinstatement of lapsed insurance under certain conditions. Heretofore the question of the reinstatement of lapsed insurance has been a matter entirely under the rules and regulations of the War Risk Insurance Bureau. The question is simply this: Shall persons suffering from injury or disease resulting from the World War, who are not permanently and totally disabled, be permitted to reinstate their lapsed or canceled term insurance or Government life insurance (converted insurance) providing they conform to all the rules, regulations, and requirements relative to the reinstatement, except as to the condition of their health? Your committee after due consideration thought it advisable to make this a matter of legislation rather than for departmental regulations.
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> *It would appear to be equitable and fair when it is remembered that as a matter of*

fact in most of the instances the reason the disabled soldier failed to keep up his insurance was that he was short of funds and it took the Government some time to investigate and grant his compensation, and that because of this financial stringency he allowed his insurance to lapse. [Italics supplied.]

The provisions in the Act of August 9, 1921, for revival of insurance in the event of death subsequent to lapse and prior to reinstatement, were added by amendment from the floor of the House (Cong. Record, Vol. 61, Part 3, pp. 2422, 2423, 2426).

In the Senate Committee Report made in connection with this Act (S. Rep. No. 231, 67th Cong., 1st Sess., p. 12), it is said, in part:

> The second proviso of the House bill, which relates specifically to persons entitled to compensation under article 3 of the war risk insurance act, declares that insurance shall not lapse if such compensation has not been collected or if no claim has been made therefor, if at the time of lapse the insured was entitled to compensation in a sum equal to or in excess of the amount due from him in premiums, and directs the bureau to pay the insurance to the beneficiaries. There is no provision in the House bill for the payment of premiums due on such insurance. Your committee believes that as under this provision the insurance is not to lapse, but to be regarded as remaining in force, the section should be amended to require the deduction of the premiums due and interest thereon at 5 per cent per annum compounded annually before making payment to the beneficiary under the policy.

The provisions for reinstatement of lapsed insurance in Section 408 of the War Risk Insurance Act were reenacted in amended form by Section 304 of the World War Veterans' Act, 1924, which, as amended by subsequent enactments, provides, as contained in 38 U. S. C. 515:

> In the event that all provisions of the rules and regulations other than the requirements as to the physical condition of the applicant for insurance have been complied with an application for reinstatement, in whole or in part, of lapsed or canceled yearly renewable term insurance or United States Government life insurance (converted insurance) made after June 7, 1924, may be approved if made within one year after July 2, 1926, or within two years after the date of lapse or cancellation: *Provided,* That the applicant's disability is the result of an injury or disease, or of an aggravation thereof, suffered or contracted in the active military or naval service during the World War: *Provided further,* That the applicant during his lifetime submits proof satisfactory to the Administrator of Veterans' Affairs showing that he is not totally and permanently disabled. As a condition, however, to the acceptance of an application for the reinstatement of lapsed or canceled yearly renewable term insurance, where the requirements as to the physical condition of the applicant have not been complied with, or, for the reinstatement of the United States Government life insurance (converted insurance), the applicant shall be required to pay all the back monthly premiums which would have become payable if such insurance had not lapsed, together with interest at the rate of 5 per centum per annum,

compounded annually, on each premium from the date said premium is due by the terms of the policy: *Provided further,* That where, within one year after July 2, 1926, all of the requirements for reinstatement of yearly renewable term insurance under this section are complied with except the payment of unpaid premiums with interest, and proof satisfactory to the Administrator of Veterans' Affairs is furnished showing the applicant is unable to pay such premiums with interest or some part thereof, the application may be approved, and the amount of unpaid premiums with interest as provided in this section shall be placed as an interest-bearing indebtedness against the insurance, such indebtedness to bear interest at the rate of 5 per centum per annum, compounded annually, to be deducted in any settlement thereunder: *And provided further,* That except as provided in section 512 of this title, no yearly renewable term insurance shall be reinstated after July 2, 1927. (June 7, 1924, c. 320, §304, 43 Stat. 625; Mar. 4, 1925, c. 553, §15, 43 Stat. 1310; July 2, 1926, c. 723, §15, 44 Stat. 799; July 3, 1930, c. 849, §23, 46 Stat. 1001; July 3, 1930, c. 863, §2, 46 Stat. 1016.)

The provisions in Section 408 of the War Risk Insurance Act for revival and maturity of lapsed insurance were reenacted in amended form by Section 305 of the World War Veterans' Act, 1924, which, as amended by the Act of July 2, 1926, Sec. 16 (c. 723, 44 Stat. 790, 799–800) provides:

SEC. 305. Where any person has heretofore allowed his insurance to lapse, *or has canceled or reduced all or any part of such*

insurance, while suffering from a compensable disability for which compensation was not collected and dies or has died, or becomes or has become permanently and totally disabled and at the time of such death or permanent total disability was or is entitled to compensation remaining uncollected, then and in that event so much of his insurance as said uncollected compensation, computed in all cases at the rate provided by section 302 of the War Risk Insurance Act as amended December 24, 1919, would purchase if applied as premiums when due, shall not be considered as lapsed, *canceled or reduced;* and the United States Veterans' Bureau is hereby authorized and directed to pay to said soldier, or his beneficiaries, as the case may be, the amount of said insurance less the unpaid premiums and interest thereon at 5 per centum per annum compounded annually in installments as provided by law: *Provided, That insurance hereafter revived under this section and section 309 by reason of permanent and total disability or by death of the insured, shall be paid only to the insured, his widow, child or children, dependent mother or father, and in the order named unless otherwise designated by the insured during his lifetime or by last will and testament.*[2] [Italics represent words added by the amendatory Act.]

In the House Committee Report made in connection with the Act of July 2, 1926 (H. Rep. No.

[2] Section 305 was further amended by the Act of May 29, 1928, Sec. 17 (c. 875, 45 Stat. 964, 971) to extend the clause "uncollected compensation" to compensation which was uncollectable by reason of a limitation clause contained elsewhere in the statute.

1217, 69th Cong., 1st Sess., pp. 7–8), it is said, in part:

> Section 17 amends section 305 to provide that canceled and surrendered insurance may be kept in force by uncollected compensation as well as "lapsed" insurance. The Comptroller General has recently ruled that canceled and surrendered insurance could not be revived under the terms of this section, but only "lapsed" insurance. The committee believes that disabled ex-service men who pay premiums on their insurance up to the time they are ready to cancel or surrender all or any part of it, should have the same privilege under this section as the men who fail to pay premiums and simply permit the contract to lapse.
>
> Section 18 amends section 305 by providing that insurance revived under the provisions of that section shall not be paid to any persons other than the widow, child, children, dependent mother or father, in the order named. This section is one which revives insurance by the use of uncollected compensation. It is a most liberal provision of the law and it was felt that it should not be permitted to revive insurance where no immediate members of the insured's family were alive to take the same.

At a hearing before the Senate Finance Committee (Hearings before the Committee on Finance, United States Senate, 69th Cong., 1st Session, on H. R. 12175, May 24, 25 and 26, 1926, pp. 50–51), General Hines, Director of the Veterans' Bureau, made the following statement with reference to the proposed amendment of Section 305 of the World War Veterans' Act, 1924:

Senator REED of Pennsylvania. Do you see any objection to the language on line 11 of page 36?

General HINES. That language will cover a decision of the comptroller, where he has held that insurance cannot be revived where the beneficiary has canceled or reduced his insurance.

Senator REED of Pennsylvania. I do not see any difference, in principle, between that case and the case where he has merely allowed it to lapse.

General HINES. No; but we feel that since the comptroller has so construed the law we had better insert this language to protect this legislation.

The report made by the Senate Finance Committee contains language virtually identical with that in the House Committee Report, *supra,* with respect to the amendment of Section 305 (S. Rep. No. 1105, 69th Cong., 1st Sess., p. 7).

The Comptroller General's decision referred to at the hearing and in the Committee Reports, *supra,* is evidently the one in the case of *Joseph J. Griffin,* A–11246, November 16, 1925, which is unreported and is, therefore, set out in full herein, as follows :

Joseph J. Griffin has requested review of settlement No. 084850, dated June 17, 1925, disallowing his claim for $362.78 representing 22 accrued installments on $3,000 of converted war risk insurance under policy No. K–461303, less accrued premiums and interest, for the period May 31, 1923, to February 28, 1925.

The facts as set forth in a memorandum dated February 15, 1925, from the Veterans' Bureau, are as follows:

"The facts in the case show that Jos. J. Griffin, entered the service in September, 1917, and applied for $10,000 of term insurance. The insured was discharged from the service on March 31, 1920, and continued to pay premiums on the term insurance to include April 1921. The insured in the year 1923, reinstated and converted $6,000 of the lapsed term insurance and paid premiums thereon to include August 1924. The remaining $4,000 of term insurance was converted effective May 1, 1921, and premiums paid thereon to include July 1921, when the insured reduced the $4,000 of converted insurance to $1,000, and changed the form of the policy. Premiums were paid on the $1,000 of converted insurance to include September 1924. The Central Board of Appeals on September 10, 1924, rated the insured permanent partial 75% disabled from date of discharge to May 31, 1923, and permanent and total thereafter. No question is raised in regard to the payment of insurance on the $6,000 and $1,000 policies in force on the date the insured became permanently and totally disabled but the question is raised whether the $3,000 of converted insurance, which was surrendered at the time the $4,000 policy was reduced to $1,000, is payable under the provisions of Section 305 of the World War Veterans' Act.

"In discontinuing the $3,000 of insurance the insured executed a Bureau form on July 15, 1921, in which he states:

" 'I, the undersigned, hereby amend my application for conversion to United States Government life insurance, dated July 21.

1921, by stating that I desire to change my present policy from

30 P. L., $4,000.00
to
20 year endowment, $1,000.00

In all other respects my application remains unchanged.' "

Section 305 of the World War Veterans' Act of June 7, 1924, 43 Stat. 626, provides as follows:

"SEC. 305. Where any person has heretofore allowed his insurance to lapse while suffering from a compensable disability for which compensation was not collected and dies or has died, or becomes or has become permanently and totally disabled and at the time of such death or permanent total disability was or is entitled to compensation remaining uncollected, then and in that event so much of his insurance as said uncollected compensation, computed in all cases at the rate provided by section 302 of the War Risk Insurance Act as amended December 24, 1919, would purchase if applied as premiums when due, shall not be considered as lapsed; and the United States Veterans' Bureau is hereby authorized and directed to pay to said soldier, or his beneficiaries as the case may be the amount of said insurance less the unpaid premiums and interest thereon at 5 per centum per annum compounded annually in installments as provided by law."

The statute expressly provides only for policies that have lapsed. It does not provide for surrendered or canceled policies. As to the former see 3 Comp. Gen. 582. A lapsed policy is generally understood to

mean one on which there has been failure or neglect to pay premiums. The entire tenor of the section shows an intention to afford relief only when there has been a failure or neglect to pay premiums. In the present case the situation involved was not merely a failure or neglect to pay premiums, but an affirmative action in changing the form of, and reducing the amount of the policy, equivalent to a surrender or cancellation. That is to say, on May 1, 1921, when the insured converted the remaining $4,000 term insurance of his original $10,000 policy into a 30 payment-life policy, he exhausted and terminated his rights with respect to his term insurance, and on August 1, 1921, when the insured changed his $4,000 30 payment-life policy to a $1,000 20-year-endowment policy, his affirmative action was equivalent to a surrender or cancellation of the $4,000 converted policy. There can not be read into the statute an intention to include surrendered or canceled policies in the absence of any specific provision therefor. In this connection it is noted that the preceding section 304, of the statute, providing for reinstatement under certain conditions, the relief is made applicable to "lapsed or canceled" policies. If the Congress had intended the following section 305, to include both of these classes of policies, it must be assumed that it would have so provided.

In view of the terms of the statute, *supra*, I am constrained to hold that there was no authority of law to revive the $3,000 of insurance under the converted policy No. K–461303 by application as premiums of the uncollected installments of disability compensation under the retroactive rating of disability.

Upon review the settlement must be and is sustained.

J. R. McCARL,
Comptroller General
of the United States.

Section 307 of the World War Veterans' Act, 1924 (c. 320, 43 Stat. 607, 627), as amended by Section 24, c. 849 of the Act of July 3, 1930 (46 Stat. 991, 1001–1002) provides:

> SEC. 307. All contracts or policies of insurance heretofore or hereafter issued, reinstated, or converted shall be incontestable from the date of issuance, reinstatement, or conversion, except for fraud, nonpayment of premiums, or on the ground that the applicant was not a member of the military or naval forces of the United States, and subject to the provisions of section 23: *Provided, That the insured under such contract or policy may, without prejudicing his rights, elect to make claim to the bureau or to bring suit under section 19 of this Act on any prior contract or policy, and if found entitled thereto, shall, upon surrender of any subsequent contract or policy, be entitled to payments under the prior contract or policy: Provided further, That this section shall be deemed to be effective as of April 6, 1917, and applicable from that date to all contracts or policies of insurance.* [Italics represent the pertinent provisions added by the amendatory Act.]

In the Senate Committee Report made in connection with the Act of July 3, 1930, *supra* (S. Rep. No. 1128, 71st Cong., 2nd Sess., p. 10), it is said, in part:

Further provision is made permitting the insured to elect after a reinstatement or conversion to go back to some prior contract and claim rights thereunder; and if he proves himself entitled to such rights, upon surrender of the latter contract or contracts, to be paid under the prior contract. The purpose is to prohibit the raising of estoppel against the claimant either in or out of the courts because of his reinstatement or conversion of his insurance. Provision is also contained whereby suit may be brought either in the original action, or by alternative plea in the same suit with a subsequent contract or policy. Recovery, however, can only be effected upon one of the contracts or policies. The effect of the present practice of the bureau in raising estoppel is to penalize the man who pays his premiums or tries to continue all or a part of his insurance in force. This amendment is specifically made retroactive in order that in any case where the claim has been heretofore disallowed on the ground of estoppel, or because of the policy not being incontestable, the insured, or the beneficiary under such contract or policy may, if he/she so elects, have the benefit thereof.

Letters from the Administrator of Veterans' Affairs to the Solicitor General:

Office of
The Administrator of
Veterans' Affairs
VETERANS' ADMINISTRATION,
Washington, December 5, 1936.

United States of America vs. *Harry J. Madigan*

The Honorable, THE SOLICITOR GENERAL,
Department of Justice,
Washington, D. C.

SIR: I am responding to your letter of December 3, 1936, relative to steps which the Department of Justice proposes to take in the case of United States of America, Appellant, vs. Harry J. Madigan, Appellee, United States Circuit Court of Appeals, Ninth Circuit, No. 8038, wherein you request that you be furnished some estimate of the increased liability under Section 305 revivals, if the rule in the Madigan case should be followed, also a statement of the general administrative policy which the Veterans' Bureau, now the Veterans' Administration, has followed with reference to cases of this type.

The Veterans' Administration and its predecessors have awarded insurance (both term and converted) under Section 305, World War Veterans' Act, and Section 408, War Risk Insurance Act, in more than 12,000 cases. The average amount of term insurance saved from lapse in such cases is approximately $7,000. A review of a portion of these cases reveals that converted insurance is involved in a relatively small proportion of them and that the average amount of converted insurance prevented

from lapse is approximately $2,000. A recent study of the records in a limited number of adjudicated cases involving converted cases indicates that there have been approximately 300 cases in which the facts were substantially similar to those in the *Madigan case,* and it is estimated that the insurance benefits payable in those cases, if that decision were followed, would exceed those which have been paid administratively by approximately $1,500,000 in the aggregate. There are now pending before the Veterans' Administration 686 claims (both death and disability) for converted insurance involving an aggregate amount of approximately $3,500,000.

While the point raised in *United States* v. *Madigan,* 85 F. (2d) 609 (C. C. A. 9th), has not been the subject of a specific formal administrative decision, it has been the consistent practice of the Veterans' Administration and its predecessors to administer Section 305, World War Veterans' Act, 1924, and the preceding provisions of Section 408, War Risk Insurance Act, on the theory that they contained no provisions, express or implied, for revival of insurance under a yearly renewable term contract after it had been converted to a policy of United States Government life insurance. Moreover, this practice continued without change subsequent to the amendment to Section 307, World War Veterans' Act of the Act of July 3, 1930, the view being held that Congress did not intend by that Act to amend Section 305, World War Veterans' Act.

It thus appears that the decision of the Circuit Court of Appeals for the Ninth Circuit in the *Madigan case* is contrary to the long continued administrative practice.

Although the records of the Veterans' Administration do not permit of an exact estimate of the total additional costs, including those arising in future claims, which would result under the rule laid down in the *Madigan* case, sufficient data is at hand to show conclusively that the additional liability thereby incurred might be substantial.

The question of law involved in the *Madigan* case would, therefore, seem to be important not only because of the desirability of proper statutory construction, but also because it may involve a substantial liability to the Government which, under the indicated practice of this Administration, has not heretofore been considered to exist.

I hope, therefore, that it will be possible to obtain a final determination of the question by the Supreme Court. If the Veterans' Administration may be of any further assistance to your Department, you may be assured that every effort will be made be cooperate.

Respectfully,

(s) Frank T. Hines
FRANK T. HINES,
Administrator.

Office of
The Administrator of
Veterans' Affairs
VETERANS' ADMINISTRATION,
Washington, February 11, 1937.

The Honorable, THE SOLICITOR GENERAL,
Department of Justice,
Washington, D. C.

SIR: Further reference is made to your letter of February 5, 1937, concerning litigation in the case of *United States* vs. *Harry*

J. Madigan, now pending before the United States Supreme Court. You request a statement as to the policy of the Veterans' Administration and its predecessors, the Veterans' Bureau and the Bureau of War Risk Insurance, in cases where after a contract of yearly renewable term insurance had been converted, and the converted policy allowed to lapse the insured desired a reinstatement of the temporary term contract. It seems scarcely necessary to state that such a case could not arise after the expiration of the time limit for carrying term insurance, laid down in Section 301 of the World War Veterans' Act, 1924, as amended, (Title 38, U. S. Code, 512.)

As to cases which arose prior to the expiration of the time limit for carrying temporary yearly renewable term insurance the controlling regulation was Treasury Decision 58 W. R. promulgated January 26, 1920, which was one of the first Treasury Decisions dealing with converted insurance in its permanent form as provided for by the War Risk Insurance Act, 1917, as amended. Paragraph 4 of Treasury Decision 58 W. R.[1] is here quoted:

"A person who has converted war-time yearly renewable term insurance into Government life insurance shall not be permitted to reconvert the Government life insurance into war-time yearly renewable term insurance, nor shall a person who has taken out Government life insurance originally be permitted to convert the same into war-time yearly renewable term insurance."

Treasury Decision 58 W. R. was superseded by Veterans Bureau Regulation No. 9

[1] Regulations & Procedure, U. S. Veterans' Bureau, 1930, Pt. 1, pp. 23, 24.

of October 29, 1921[4] but the foregoing paragraph quoted from the Treasury Decision was carried forward without change.

I may state, that, in my opinion, the wording as contained in Paragraph 4 of Treasury Decision 58 W. R. and Veterans Bureau Regulation No. 9 is so clear that I have never had occasion to rule on any case presented by reason of any possible ambiguity in said Treasury Decision. Similarly, I am not aware that my predecessors were ever called upon to construe this particular language of the Treasury Decision in question. It has been the uniform position of the Veterans' Administration and of its predecessors, as long as this question was pertinent, to hold that when a policy of yearly renewable term insurance had been converted and the converted policy allowed to lapse, there was then no right to reinstate the original term insurance, any reinstatement being limited naturally to the converted contract.

Respectfully,

(s) Frank T. Hines
FRANK T. HINES,
Administrator.

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[4] Regulations & Procedure, U. S. Veterans' Bureau, 1930, Pt. 1, Par. 4, pp. 80, 81.

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